

# Exhibit 1



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January 29, 2018

**VIA CM/ECF**

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Hon. Rodney Gilstrap  
United States District Judge  
United States District Court for the Eastern District of Texas  
Sam B. Hall Jr. Federal Building and U.S. Courthouse  
100 East Houston St.  
Marshall, TX 75670

Re: *EnerPol, LLC v. Schlumberger Technology Corp.*, Civ. No. 2:17-cv-394-JRG

Dear Judge Gilstrap:

Thank you for hearing oral argument last Friday on EnerPol's Motion to Strike and Preclude (Dkt. #85), and for taking the matter under advisement. For the Court's further consideration, and as discussed at the hearing, please find attached appellate authority confirming district courts' discretion to find waiver against claim construction positions not timely advanced:

- *Wi-LAN USA, Inc. v. Apple, Inc.*, 830 F.3d 1374, 1385 (Fed. Cir. 2016) ("We generally support a district court's case management authority to set a schedule for claim construction that requires parties to take positions on various dates and holds the parties to these positions.")
- *Akamai Technologies, Inc. v. Limelight Networks, Inc.*, 805 F.3d 1368, 1376 (Fed. Cir. 2015) (affirming district court's holding that a party's stipulation to claim construction waived later challenge, notwithstanding *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1361 (Fed. Cir. 2008))

Very truly yours,

/s/ Robert Courtney

Robert Courtney  
Counsel for EnerPol, LLC

cc: Counsel for Schlumberger Technology Corp. (Via CM/ECF)

Attachments (2)